II.

JURISDICTIONAL STATEMENT.

Each petitioner appealed to the Circuit Court of Appeals for the Seventh Circuit which affirmed the judgments of conviction July 22, 1940. (R. 219.) Timely petition for rehearing was filed (R. 229) and overruled September 24, 1940. (R. 229.) This Court has jurisdiction to review the judgment under the Act of March 8, 1934 (48 Stat. 926, 18 U. S. C. A. § 723a). This petition is filed before the expiration of the thirty days prescribed by Rules XI and XIII of the Rules of Practice and Procedure promulgated May 7, 1934 (292 U. S. 661, 666) made applicable by Rule 38 (2) of this Court. (306 U. S. 717.)

Excluding five Sundays (September 29, October 6, 13, 20 and 27) and one legal holiday, October 12 (Indiana Acts 1931, Ch. 88, § 1, p. 254), such thirty days expires October 30, 1940.

III.

QUESTIONS PRESENTED.

(1) On the assumption that the project proposals and applications for allotment of W. P. A. funds indicated an intention to use the money only on *existing* "farm to market" highways, did such limitation have any weight or controlling effect when not embodied in the Presidential authorization for the expenditure of the funds?

(2) Whether the Circuit Court of Appeals was justified in giving weight to the jury's verdict that the expenditure of W. P. A. funds was not "within the purview of the authorized works," when the scope of the project necessarily

depended upon the construction of the Appropriation Acts and other writings, and the facts as to the use of the funds were undisputed?

(3) Intent to defraud the United States being an essential part of the offense charged in each count of the indictment, and the "fraud" charged consisting entirely of the actual or planned use of W. P. A. funds and labor in alleged contravention of certain administrative proposals, orders and regulations of which the defendant Derbyshire is not shown to have had any knowledge, could the requisite fraudulent intent to convict the defendant Derbyshire be inferred from the fact that he was deriving a benefit from the work, or from negligence in failing to make further inquiry?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(1) The decision of the Circuit Court of Appeals that the terms of a project proposal stating intended use of funds appropriated for work relief under the Emergency Relief Appropriation Acts of 1937 and 1938 (50 Stat., as amended, 52 Stat. 817; 52 Stat. 809) could restrict and limit the Presidential authorization for use of the funds, is the decision of an important question of federal law which has not been but should be settled by this Court.

(2) The exact nature of the actual or contemplated use of W. P. A. funds and labor in building roads, constituting the gravamen of the offense charged in each count of the indictment, having been disclosed by uncontradicted evidence, and "the purview of authorized works" having been

decided to be dependent upon written proposals, applications, letters, bulletins, and regulations, the decision of the Circuit Court of Appeals that the question whether or not the roads constructed were "within the purview of authorized works" was properly submitted to the jury and giving effect to the jury's verdict, determined an important question of federal law in a way probably in conflict with the applicable decision of this Court in *Hamilton v. Liverpool, London and Globe Insurance Co.*, (1890), 136 U. S. 242, and in conflict with the decisions of the following Circuit Courts of Appeals, viz.:

Equitable Life Assurance Society of the United States v. Wells, (C. C. A. 6, 1939) 101 F. 2d 608;

Union State Bank & Trust Co. v. Northwestern Life Ins. Co., (C. C. A. 5, 1932) 55 F. 2d 1070;

Burrows & Kenyon, Inc., v. Warren, (C. C. A. 1, 1925) 9 F. 2d 1;

Schloss Bros. & Co. v. Charles Stern Co., (C. C. A. 5, 1929) 36 F. 2d 628;

McKnight v. U. S., (C. C. A. 9, 1935) 78 F. 2d 931;

United States v. Dennett, (C. C. A. 2, 1930) 39 F. 2d 564, 76 A. L. R. 1092;

United States v. White Oak Coal Co., (C. C. A. 4, 1925) 5 F. 2d 439.

(3) The decision of the Circuit Court of Appeals that petitioner Derbyshire, who was not shown to have had any knowledge of any of the proposals, applications, letters, bulletins, rules or regulations held to have placed the actual

and contemplated use of W. P. A. funds and labor without the purview of authorized works, could nevertheless be found to have had the intent to defraud the United States requisite to conviction under each count of the indictment, is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in *Landen v. United States,* (C. C. A. 6, 1924), 299 Fed. 75.

(4) The decision of the Circuit Court of Appeals that petitioner Derbyshire, who was not shown to have had any knowledge of any of the proposals, applications, letters, bulletins, rules or regulations, held to have placed the actual and contemplated use of W. P. A. funds and labor without the purview of authorized works, could nevertheless be found to have had the intent to defraud the United States requisite to conviction under each count of the indictment, is in probable conflict with the decisions of this Court in *Pettibone v. United States,* (1893), 148 U. S. 197, and *Morrison v. California,* (1934), 291 U. S. 82.

WHEREFORE, your petitioners each respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full, true and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket No. 7176 and No. 7177, respectively entitled "The United States of America, Plaintiff-Appellee, v. Carl F. Kortepeter, Defendant-Appellant," and "The United States of America, Plaintiff-Appellee, v. Gurney G. Derbyshire, Defendant-Appellant," and that the judgment of the United States Circuit Court of Appeals for the Seventh Circuit

in each of said cases may be reversed by this Court, and that each of your petitioners may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioners will ever pray.

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